

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

1:07-cr-400 (GLS)

BARBARA M. McCLINTON

APPEARANCES:

OF COUNSEL:

FOR THE GOVERNMENT:

HON. GLENN T. SUDDABY
United States Attorney
Northern District of New York
445 Broadway
218 James T. Foley U.S. Courthouse
Albany, New York 12207-2924

TINA E. SCIOCCHETTI
Assistant U.S. Attorney

FOR THE PETITIONER:

BARBARA M. McCLINTON
14232-052
Federal Prison Camp Danbury
Pembroke Station
Danbury, Connecticut 06811

**Gary L. Sharpe
U.S. District Judge**

ORDER

Petitioner Barbara M. McClinton is presently confined at the Federal Prison Camp Danbury in Danbury, Connecticut. On May 22, 2008, Petitioner filed a Motion to Vacate, Set Aside or Correct the Sentence (“Motion to Vacate”) pursuant to 28 U.S.C. 2255. See Dkt. No. 27. In her Motion to Vacate, Petitioner asserts four grounds upon which a habeas relief is warranted. None of those grounds includes a claim that she was denied a right to appeal. However, Petitioner states as the reason for her failure to file an appeal, “When I requested to my lawyer to file my appeal he informed me that I could not appeal because of my guilty plea. He claimed that I had waived my right to an appeal.” Motion to Vacate at 4. Petitioner further claims, “counsel told me that in my plea agreement I had waived my right to appeal. I did not have the chance to previously present any of the above grounds.” Id. at 6

It is unclear from Petitioner’s *pro se* motion whether she is alleging that her counsel improperly advised her concerning her appellate rights in light of her waiver of appeal, or that he ignored a specific request from her to file an appeal. In light of the potential significance of such allegations

under Campusano v. United States, 442 F. 3d 770 (2d Cir. 2006), the Court is granting Petitioner leave to amend her motion to include this claim if she intended to raise it as a ground for relief.

Accordingly, for the foregoing reasons, the court hereby

ORDERS, that if Petitioner intends to assert a claim regarding a denial of the right of appeal, she is to file an amended Motion to Vacate stating that ground and the supporting facts, on or before October 24, 2008. Otherwise, the court will conclude that Petitioner has not raised a claim regarding a denial of the right of appeal in her Motion to Vacate; and it further

ORDERED, that the Government is directed to electronically file a response to the Motion to Vacate on behalf of the United States, and to serve a copy on the Petitioner, no later than November 14, 2008; and it is further

ORDERED, that if the Government needs to refer to any court proceedings in its response, such as the plea and/or sentencing hearing, the Government shall provide the Court with a copy of the transcripts related to any such proceedings together with the Government's response; and it is further

ORDERED, that all papers filed in this action shall be done in the underlying criminal case; and it is further

ORDERED, that the clerk is to serve a copy of this Order upon the parties by regular mail.

SO ORDERED.

Dated: September 24, 2008
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge